Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JACOB SAMPSON,

Petitioner,

v.

FREDERICK F. COHN &
DAVID C. DANIELS,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

6138 N. Clark St.,
Chicago, Ill.60660
(312) 761-0766

Jacob Sampson
Petitioner pro se

No. _____

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QUESTIONS PRESENTED FOR REVIEW

I.

Whether the decision of the United States District Court for the Northern District of Illinois that the Petitioner's Complaint lacks subject matter jurisdiction, and the affirmation of that decision by the United States Court of Appeals for the Seventh Circuit on different grounds, namely, that defense attorneys enjoyed "absolute immunity from subsequent damages liability" for actions taken in the course of judicial proceedings, which should be reviewed by this Court.

II.

Whether the United States District Courts have jurisdiction of actions after state criminal proceedings for attempted murder were brought to a legal nullity by undisputed Respondents' fraud, in context of numerous other violations of Petitioner's Rights, upheld by Courts of the same District.

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Petitioner JACOB SAMPSON respectfully prays that a Writ of Certiorari issue to review the judgment and order of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on December 30, 1986.

OPINIONS BELOW

The decision of the Court of Appeals, not reported, is set out at pp.7a - 16a of the Appendix. The order denying rehearing, not reported, is set out at p. 17a. The District Court Memorandum Opinion and Order, not reported, is set out at pp.1a-6a of the Appendix.

JURISDICTION

Petitioner seeks a review of a judgment of the Court of Appeals dated December 30, 1986. Rehearing was denied by Order dated February 17, 1987.

Since substantial Federal questions arising under the Constitution of the United States are involved in this case, the jurisdiction of this Court is invoked under the provisions of Article II, Sections 2 and 19 of the Constitution of the United States, 28 United States Code Section 1254 (1), and Rule 19(1) of the Rules of the United States Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves Federal questions arising under the Fourteenth Amendment to the United States Constitution which provides in pertinent part as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This case arose from a deliberate act of two conspiring defense attorneys Frederick F. Cohn and David C. Daniels, who through undisputed fraud denied relief for attempted murder of Petitioner (plaintiff) in state criminal Court proceedings.

Petitioner was attacked on his own property on September 5, 1984, by one Colen Hansen who without cause or justification directed his two large dogs to attack plaintiff, and while held by the ankles, Hansen

applied a "judo kick" into plaintiff's abdomen and chest, intended to kill. Charges were brought against Hansen in state court. Following a bench trial, Hansen waived a jury was found guilty and fined $300. Rather than pay the fine, Hansen hired a new attorney, defendant Cohn, who falsely stated in his Motion for a new trial (R. 10, Exh. B) that there was never a waiver, contrary to the transcript (Petition Appendix 19a), followed by another ploy of several false continuances "demanding a jury", which once again was waived, the case came for trial, which never took place, because the complaining witness Sampson was under heavy medication (the result of inflicted injuries by Hansen) and demanded the one and only continuance, defendants opposed and the case was dismissed. Based on these facts, Sampson filed a pro se complaint in district court.

The Complaint (R. 1) alleged that the actions of the defendants in connection with the state criminal proceedings violated

his basic Constitutional right of due process under the Fourteenth Amendment, the equal rights under the law 42 U.S.C. §1981 and 1985(2) and (3), and the laws of the State of Illinois. The district court erroneously concluded that a racially motivated deprivation by bringing state action to a legal nullity by Defendants, through undisputed fraudulent means, is insufficient to invoke federal jurisdiction.

On reconsideration, the district court again failed to consider that a remedy in the state courts is not available because of the uncontroverted fact that defendants refused to comply with court orders.

The Court of Appeals for the 7th Circuit upheld the dismissal on different grounds, namely,that the attorneys-defendants enjoy "absolute immunity from subsequent damages liability"(Circuit order at 3) citing irrelevant authorities Imbler v. Pachtman, 424 U.S. 409,(9th Cir. 1976), Briscoe v. Lahue, 460 U.S. 325 (7th Cir. 1983), as stated:

"Similarly, judges...and prosecutors may not be held liable for damages under §1983 for the performance of their respective duties in judicial proceedings."

Defendants are not in the above category and no claim under §1983 is pending against them, however, allegations under the Fourteenth Amendment were adequately substantiated in the Complaint.

The Seventh Circuit's error of mistaken identity is obvious, proven in its contradiction at ¶ 3:

"Although defense attorneys, at common law, did not enjoy a blanket immunity for intentional misconduct."

The District Court was misled by conspiring unethical by any standard, attorneys, by denying due process to plaintiff.

The Court of Appeals erred and did not scrutinize the Record in context of other civil rights violations,and upheld District Court's dismissal.

The issues to be disposed by this Court involve controlling questions of law as to

which there is substantial ground for difference of opinion and that an immediate review of the issues involved may materially advance the termination of the litigation.

THE CASE AT BAR IS NOT AN ISOLATED INCIDENT

Since the publication of plaintiff's most recent Patents No.No. 4,187,773; 4,360,952 and 4,437,208 in the United States Official Gazette, foreign and domestic trade journals in 1978, an incredible chain of events followed and continues to this day with terror and harassment by some Chicago Municipal employees and their agents.

On June 26, 1979, a Commonwealth Edison meter reader Walter McCann was apprehended while burglarizing plaintiff home. Chicago Police falsified the report No. C 293916 thus denied relief for considerable losses.

On February 17, 1983, twenty (20) Chicago Firemen with Police forced their entry into plaintiff's research laboratory with atmost brutality and profanity Fire Captain

Crawford brutally pulled plaintiff toward him, in presence of others made the following uncontroverted statement:

"NOW LISTEN YOU FUCKIN JEWBOY, WHEN I AM HERE THIS PLACE IS MINE"

There was no exigency of any kind to justify the intrusion and keeping plaintiff forcibly in a cold garage for 30 minutes, while the Firemen removed everything of value. A familiar scenario of Storm troopers of Nazi Germany against their innocent Jewish victims, taking away their belongings. Case pending before the Seventh Circuit No. 86-2133,and it may land before this Court.

On September 5,1984, an attempt was made to silence the plaintiff, by one COLEN HANSEN in a conspiracy with Chicago Police, followed with a false arrest of plaintiff, for 18 hours without food nor urgently needed medication, with consequential permanent injuries. Allegation of cruelty being

upheld in Court of this District, 84 C 7749. The attorneys COHN and DANIELS, Respondents in this action, neutralized the State Criminal Court action, as mentioned by uncontroverted fraudulent means.

On Saturday, February 8, 1986, after 5:00 p.m., about ten (10) Firemen of the same Chicago Engine Company 70, surrounded plaintiff's office building and without probable cause or legal justification attempted to force their entry through every door and window. Failing by brute force to gain entry, the Firemen did cut with their power saw the steel security bar located across the front office door, which triggered the burglar alarm system and allerted plaintiff who called the Police, and as soon the Police arrived, the Firemen hastily drove off.

Police Lieutenant Hamilton of the 24th Chicago Police District,refused to register Plaintiff's complaint of attempted burglary, and instead he threatened with: "If you are

going to be a cute kike and complain about this incident, you will be arrested" which he did, and for"incriminating evidence"ripped out the burglar alarm system's wiring, rendering it inoperative,as intended. Allegations of false arrest and attempted burglary upheld by the Court of this District case No. 86 C 2668, scheduled for trial. The false charges against plaintiff in the criminal court were dismissed at the jury trial on March 30 to April 2, 1987.

On July 10, 1986,. the same Firemen of Engine Company 70 made another attempt to force their entry, but were driven away by the burglar alarm siren.

To this date the scandalous mistreatment under color of state law continues, without relief in sight, and the attorneys-respondents want this Court to adopt a new concept not suggested by any authority, case or otherwise, that the VICTIM should be punished for pursuing justice and seeking relief.

Respondents COHN and DANIELS in their generous display of racial venom and class animus, in disguise of legal argument with malicious distortions,also want this Court to return to barbarity, a method abhorrent in our society.

The plaintiff experienced the "GERMAN JUSTICE" in their concentration camps. His experience in the United States so far,did not even remotely suggest an "AMERICAN DREAM" either, but did not loose faith, in light of "OPERATION GREYLORD" exposing the evil attorneys meeting the just punishment.

It would be unjust to deny recovery in this case especially where the party, injured and abused is an innocent victim.

Denial of recovery to these innocent victims of defendants' conduct, shocks the concience of society and, plaintiff thinks, of this Court which represent society.

REASONS FOR ALLOWING THE WRIT

The gist of the issue presented by this case concerns the question whether Petitioner stated a Federal cause of action after the legally established state procedures were violated through fraud to the extend that it was rendered a legal nullity and he was denied the relief entitled to, vieed in context of the copending Federal actions for the alleged multi million dollar robbery followed with an attempted murder by Chicago Municipal employees and their agents of which attorneys-Respondents COHN and DANIELS are an alleged party in the racially motivated conspiracy for their unjust enrichment.

I. PETITIONER STATED A CLAIM UNDER THE FOURTEENTH AMENDMENT

One of petitioner's asserted grounds of Federal jurisdiction, Amendment XIV provides in pertinent part:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Thus invoking Federal Jurisdiction, also relying on Taylor v. Nichols, 409 F. Supp. 927 (1976), quoting Bottone v. Lindsley, 170 F.2d (10th Cir. 1948) and McShane v. Moldovan, 172 F.2d 1016 (6th Cir. 1949), where is stated:

> "Of course, if the legally established state procedures are violated to the extend that the state court proceedings are rendered a legal nullity, a cause of action under the Civil Rights may be stated."

Based on said authority the District Court's dismissal of Complaint was clearly erroneous,where the Civil Rights Act grants jurisdiction in cases involving alleged denials of due process and equal protection clauses of the Fourteenth Amendment, as stated in Johnson v. Robinson, 296 F.Supp.1165, affirmed 89 S.Ct. 1622, 394 U.S. 847.

II. THE DISTRICT COURT'S DISMISSAL IS SQUARELY CONTRARY TO THE SEVENTH CIRCUIT'S OWN HOLDING

In Johnson v. Stone, 268 F.2d 803 (7th Cir. 1959) the Court held:

> "To make out a cause of action under the Civil Rights statutes, state court proceedings must have been a complete nullity with a purpose to deprive a person of his property without due process of law. 42 U.S. C.A. §§1983, 1985."

The unsdisputed fraud perpetrated by defendants proves that indeed, their purpose was to deprive plaintiff of his liberty and property and of due process.

III. THE DISTRICT COURT'S ORDER (R. 11) MISSTATED THE FOLLOWING:

> "As to defendant Cohn,plaintiff alleges that Cohn represented police officer Colen Hansen in a criminal battery action under which plaintiff was the complainant, successfully opposed plaintiff's motion for a continuance, and thereby got the case to be dismissed without prejudice."

Plaintiff alleged that COLEN HANSEN was the hit-man for the police, but never that he himself was a policeman as erroneously stated in district court's order.

Furthermore, plaintiff's case in state criminal court was dismissed with prejudice, not as aforementioned, and plaintiff in his pleadings expressly alleged that defendants had discriminated against him because of his race and class-based animus to a Jewish Immigrant, who was prevented from giving evidence in said Court.

> "Finally, as this Court noted earlier plaintiff also failed to state a 1983 claim against these particular defendants, since neither was engaged in action under color of law at the time of events in question."

Plaintiff never stated a claim under 42 U.S.C. §1983 in his pleadings, but it was a misleading fabrication by defendant COHN and his counsel JOYCE MATUZAK(R. 6 ¶2).

> "The dismissal is without prejudice to any state law claims which the plaintiff may have against the defendants, but any claims would have to be filed in the state court."

Plaintiff proved in his Motion for Reconsidersation (R. 4, Exhibits "B", "C","D" and "E") that defendants defy State Court orders with impunity, thus no relief.

District Court's Memorandum Opinion and Order states: (R. 3 ¶1)

> "The facts alleged in the complaint are as follows:In September of 1984 the plaintiff had an altercation with Colen Hansen."

The District Court's action could be considered as bias against plaintiff for whatever reason, because to call an attempted murder with consequential permanent injuries "an altercation" is equal to call the lynching of Negroes as "an altercation" with the Ku Klux Klan, or the Genocide of of Six million Jews as an altercation with Nazis of Germany.

The allegation of conspiracy to murder the plaintiff in violation of section 1983 upheld by another Court of this District, (84 C 7749),where the causes are sufficiently distinct to warrant litigation on both fronts i.e.Federal action for Civil Rights Conspiracy, in contrast with state action for personal injuries, brought to a legal nullity by COHN and DANIELS.

IV. PETITIONER STATES A CLAIM PURSUANT TO 42 U.S.C.§1981

One of the petitioner's asserted grounds of Federal Jurisdiction, Section 1981 provides:

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, ..."

The question tendered is whether 42 U.S.C. §1981 prohibits discrimination under the allegations of the complaint including, inter alia, preventing to give evidence, and denial the equal benefit of all laws and proceedings for the security of person and property. Initially then, the court is faced with a question of statutory construction and, accordingly, we must first turn to the text of the statute as quoted above.

The statute's language is of extraordinary breadth.

It does not speak in terms of race, religion or nationality but, on the contrary, speaks of "all persons."

This act creates a cause of action against persons who violate the equal benefit of all laws and proceedings for the security of persons and property, and the right to be free from unequal punishment, pains, penalties... See Spriggs v. City of Chicago, 523 F.Supp.146 (N.D.Ill.E.D.1981).

Petitioner (plaintiff) in his complaint alleged that he is of Jewish faith and ancestry and that he was discriminated against on the basis of his racial identification. Though the defendants never made an attempt to deny their wrongdoing, but equally deny their motive for the wrongdoings other than racial, and then claiming absolute immunity, falsely relying on Briscoe v. Lahue, 460 U.S. 325 (7th Cir.1983), to a category of judges and prosecutors, they do not belong (R. 7, ¶3).

V. PETITIONER STATES A CLAIM PURSUANT TO 42 U.S.C.§1985

The other asserted basis of Federal Jurisdiction, Section 1985(2) provides:

> "Depriving persons of rights or priviliges .... if two or more conspire for the purpose of impeding, hindering, obstructing or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws,..."

The portion of §1985(2) upon which petitioner (plaintiff) relies, employs virtually the same language regarding the deprivation of equal protection as contained in the first portion of §1985(3), upon which petitioner also bases his complaint.

The plaintiff's complaint alleged that defendants COHN and DANIELS conspired to deprive plaintiff of relief for injuries inflicted upon him by their client COLEN HANSEN. Plaintiff's complaint alleged racial discrimination and class-based animus, which interestingly,defendants do not deny,

but instead they created irrelevant "smoke screens" by stating that they were not involved in any state action, (Cohn's Memorandum, R. 6 ¶2).

Another "smoke screen" and contradiction by Daniels follows in his Response (R. 7, ¶2) that:

> "The only well-pleaded facts supporting the ~~Count~~ I claim against Daniels are that he represented Officer Knapsik who was testifying in the battery case and he "opposed a continuance" resulting in the dismissal with prejudice of the criminal case."

The falsity of above statement is apparent is in his own sworn Affidavit (R. 9, paragraph 3) stating:

> "Affiant does not now and has never represented Kenneth Knapsik as a defendant or witness in any case civil or criminal, in federal or state court, other than 84 C 6360."

Officer Knapsik never testified in criminal Court because there was no trial of any kind to testify, and secondly he would be a bias witness, by being a Defendant in copending Federal action 84 C 6360.

Beside "smoke screens" the defendants take the self-righteous liberty to distort cited authorities in stating (R. 7 at 3):

> "Moreover, even assuming arguendo that Count I states a claim against defendant Daniels upon which relief might otherwise be granted, defendant is entitled to absolute immunity from suit under the facts of this case. Defendant's immunity is derivative of Officer Knapsik's absolute immunity from suit as a witness in a trial since it is alleged that defendant's conduct was soley attributable to his role as attorney for a witness. See Briscoe v. Lahue, __ U.S. ___ , 103 S.Ct.108 (1983); cf. Dennis v. Sparks,449 U.S. 24 (1980)."

Defendant failed to cite any authority where a bias witness enjoys absolute immunity, certainly not at Briscoe or Dennis falsely attributed to, intended to mislead the Courts, followed by another classic example of contradictions as R. 7, ¶5 v. R. 7, ¶2.

> "Assistant Corporation Counsels such as defendant Daniels do not enjoy criminal prosecution authority under state law and do not participate in criminal trials as either the prosecutor or the defense attorney and therefore do not reprresent witnesses or make or oppose motions in such cases."

Defendants attempt to achieve their ends by any means, by including a Memorandum Opinion (R. 7) of another case 84 C 6360 on appeal at the Seventh Circuit (86-2133).

Defendant Daniels also argues at R.7,¶3:

> "under no set of conceivable facts can he be liable for the alleged constitutional tort of "legal terror" as there clearly is no such recognized tort under the Constitution."

The term "legal terror" like "murder", achieved by any means will still be MURDER, so with "legal terror" attempted by unethical attorneys, depriving a citizen of his civil rights to life and liberty, without physical violence, will still be TERROR, in particular, when two attorneys conspire for the purpose of impeding, hindering, obstructing and defeating, in described manner,the due course of justice, with intent to deny to plaintiff the equal protection of the laws,as seen in context of other scandalous violations of plaintiff's fundamental human rights, by Chicago Municipal employees.

VI. PETITIONER STATED A FEDERAL CLAIM

Petitioner alleged facts which showed that he was injured as a result of his membership in a suspected class, that the case at bar was not an isolated incident, it was in fact a consistent well organized action to deprive plaintiff of his rights,and even if affected the Petitioner only as an individual, it should not mean that "the first dog bite is free" analogous to civil rights deprivations of Negroes,Women and Hispanics, the petitioner too should be entitled for relief for alleged racial discrimination and class-based animus which resulted in injuries and impoverishment.

The "class-based, invidiously discriminatory animus" referred to in Griffin v. Breckenridge, 403 U.S. 88, relates "to that kind of irrational and odious class discrimination akin to racial bias-such as discrimination based on national origin or religion."

In Cartolano v. Tyrrell, 421 F. Supp. 526 (1976), Arnold v. Tiffany, 359 F. Supp. 1034, and as indicated by the Seventh Circuit's most recent comment on §1985, only those classes falling within a broad interpretation of "suspect classifications" qualify for protection under the Griffin interpretation on the statute. Murphy v. Mount Carmel High School,543 F.2d at 1189 (7th Cir.1979).

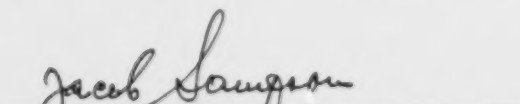
A number of courts have allowed section 1981 and 1985 actions to be brought by Jews; some explicitly finding Jews covered. See Marlove v. Fisher Body, 489 F.2d 1060 (6th Cir. 1973), and some implicitly finding so by determining the validity of the case on the merits. See Klupt v. Blue Island Fire Dept., 489 F. Supp. 195.

There can be no justification for reaching a different result in the present case where the statute explicitly provides for recovery by anyone injured as a result of the proscribed conspiracy.

CONCLUSION

This Court should grant the writ of certiorari to the United States Court of Appeals for the Seventh Circuit to review the decision rendered by that Court on December 30,1986, and should reverse that decision, which is erroneous as a matter of law and violates the Petitioner's rights mainly under the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted,



Jacob Sampson, Petitioner
pro se.

6138 N. Clark St.,
Chicago, Ill.60660
(312) 761-0766

CERTIFICATE OF SERVICE

This is to certify that I am the Petitioner pro se, and that I have this date served copies of the above and foregoing Petition for Writ of Certiorari upon the following persons by delivering three (3) copies personally to:

RUTH M. MOSCOVITCH, Chief Assistant Corporation Counsel of the City of Chicago,
610 City Hall, Chicago, Illinois 60602

JOYCE A. MATUZAK
205 West Wacker Drive, Suite 1515
Chicago, Illinois 60606

This 9th day of April, 1987

Jacob Sampson
Jacob Sampson
Petitioner pro se.

6138 N. Clark St.,
Chicago, Ill.60660
(312) 761-0766

PROOF OF SERVICE:
3 copies received:

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CORPORATION COUNSEL
CHICAGO
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BY

Received
3 Copies
F. F. Cohn
205 W. Wacker Dr
Chicago, Ill.

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE NOTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JACOB SAMPSON, Plaintiff,	)	
v.	)	No.86 C 0014
FREDERICK F. COHN and DAVID C. DANIELS, Defendants.	)	

MEMORANDUM OPINION AND ORDER

SUSAN GETZENDANNER, District Judge:

The plaintiff has filed a pro se complaint against two attorneys charging a violation of his civil rights under 42 U.S.C. §§ 1981 and 1985. The facts alleged in the complaint are as follows: In September of 1984,the plaintiff had an altercation with Colen Hansen.A criminal case against Colen Hansen was begun (whether it was in connection with the altercation or not is not clear, but presumably it was because the plaintiff was involved in the criminal case). Hansen first was represented by Keith Ligon and later by Frederick F. Cohn, one of the defendats in this case.

The other defendant in this case is David C. Daniel. He is an attorney with the Corporation Counsel's office and represented one of the witnesses in the criminal case, a police officer named Kenneth Knapsik.

The criminal case was tried on January 30, 1985 before Judge Wilens at Branch 29. Hansen was found guilty and fined $300.

Instead of paying the fine, Hansen hired a new lawyer, Cohn, and filed a motion for a new trial on the ground that the jury waiver had been improper. Plaintiff suggests that the motion for new trial was groundless since at least Hansen's former attorney understood the jury waiver. On March 11, 1985, a new trial was granted. Several continuances of the new trial were obtained because Hansen was demanding a jury.Plaintiff claims that this demand was a ploy because Hansen later again waived a jury.Eventually Hansen waived a jury and the case was retried on October 16, 1985 in Branch 46 by

Judge John McDonnell. At the trial, Hansen, apparently through his attorney Cohn, made "distortions, lies and false accusations against the plaintiff." (4.6 of the complaint). The plaintiff requested a continuance of the trial in order to aquaint himself with the issues presented by Cohn.Both Cohn and Daniels (the attorney for the police officer witness) opposed a continuance and "as a result, plaintiff cause of action was dismissed with prejudice." (4.8 of the complaint). In Count I, plaintiff alleges that the defendants violated his constitutional rights,claiming that the defendants actions subjected minorities and immigrants to the " 'legal terror' of conspiring attorneys. " (4.9 of the complaint). Presumably, the plaintiff is either a minority or an immigrant. In Count II, the plaintiff claims that the defendants violated various provisions of the Illinois Code of Professional Responsibility by engaging in dishonesty,

fraud or misrepresentation and by knowingly making a false statement of law or fact.Several factual allegations of the plaintiff do not make sense. For example, the plaintiff claims that his case was dismissed with prejudice, but the case was in fact a criminal case, People v. Hansen. It was not the plaintiff's case.The only factual assertion against defendant Daniels is that he opposed continuance of the trial after the case apparently had been continued several times. This hardly appears to be a wrongful act of any nature. The plaintiff is appearing pro se and this court is obligated to view the pleadings carefully to see if there is any possibility of a claim that properly can be presented in federal court. Notably, the plaintiff has two other case pending in this court which are at least tangentially related to the Hansen incident.In Sampson v. Weidell, 84 C 6360,the plaintiff claims that his research facilities were burglarized by

Chicago firemen. The defendants in that case are represented by David Daniels, one of the defendants in this case. Plaintiff's other case is Sampson v. Stipek, 84 C 7749, and in that case plaintiff claims that some Chicago policemen conspired with Colen Hansen to murder the plaintiff. That case is pending before Judge Plunkett.

The plaintiff has not stated a civil rights action against the two attorneys who are defendants in this case. Attorney Cohn was acting as a privated attorney representing a criminal defendant in the state ciminal courts. Attorney Daniels was employed by the Corporation Counsel's office,but all he allegedly did was to oppose the continuance of a case which had already been continued several times by Cohn. There is no state action in this case, and on the facts alleged, there could be no state action. The defendants are not alleged to have conspired with anyone who was acting under color

of state law and on the facts alleged there does not appear to be any basis for such allegations.

Accordingly, this court lacks subject matter jurisdiction of this case and the case is dismissed. This dismissal is without prejudice to any state law claims which the plaintiff may have against the defendants, but any such claims would have to be filed in the state court. The plaintiff may file an amended complaint within thirty days to cure the jurisdictional deficiences, or he may appeal this court's decision by filing a notice of appeal within thirty days of the date this order is docketed by the Clerk of the Court. It is so ordered.

Signed: Susan Getzendanner, United States District Judge.

January 6, 1986

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Submitted November 30, 1986*
December 30, 1986

Before
Hon. RICHARD A. POSNER, Circuit Judge
Hon. FRANK H. EASTERBROOK, Circuit Judge
Hon. WILBUR F. PELL, JR., Senior Circuit Judge

	:	Appeal from the
	:	United States
JACOB SAMPSON,	:	District Court
Plaintiff-Appellant,	:	for the Northern
	:	District of Illi-
No. 86-1840 v.	:	nois, Eastern Di-
	:	sion.
FREDERICK F. COHN &	:	No. 86 C 014
DAVID C. DANIELS,	:	Susan Getzendan-
Defendants-Appellees.	:	danner, Judge.

O R D E R

Plaintiff filed a pro se complaint against two attorneys, alleging violations of his constitutional rights in connection with a state criminal proceeding in which he was a complaining witness. The district court dismissed the complaint and entered judgment in favor of the defendant.On recon-

* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in

sideration, the court reaffirmed its dismissal. Plaintiff appeals. We affirm.

I.

The following relevant facts are alleged in the complaint and motion for reconsideration. Plaintiff,Jacob Sampson,is Jewish and an immigrant. In September 1984, plaintiff was attacked by Colen Hansen and injured. Criminal charges were brought against Hansen in state court. Following a bench trial, Hansen was found guilty and fined $ 300. Rather than pay the fine, Hansen hired a new attorney, defendant Frederick F. Cohn, and moved for a new trial on the ground that his jury waiver had been improper. A new trial was granted.After several continu-

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* (continued from page)
this case. The notice provided that any party may file a "Statement as to Need of Oral Argument." See Rule 34(a), Fed. R. App. P., Circuit Rule 14(f).Plaintiff has filed such a statement and requested oral argument. Upon consideration of that statement,briefs and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

ances due to Hansen s demand for a jury, he once again waived his right to a jury and the case was retried. At the second trial, defendant David C.Daniels, an attorney from the Corporate Counsel of the City of Chicago, represented police officer Kenneth Knapsik, a witness in the case. At that trial, Hansen, apparently through his attorney, defendant Cohn, made "distortions, lies and false accusations" against plaintiff, the complaining witness. Plaintiff therefore requested a continuance to aquaint himself with the issues presented by Cohn. Because Cohn and Daniels opposed continuance,it was denied, and, as a result, the criminal case was dismissed.

Based on these facts, plaintiff filed a pro se complaint in district court. The complaint alleged that the actions of the defendants in connection with the state criminal proceedings violated 42 U.S.C.§§ 1981 and 1985(2) and (3),and the laws of the Sta-

te of Illinois, including several sections of the Illinois Code of Professional Responsibility, and constituted "deliberate assault and battery" and "legal terror" against minorities and immigrants.On its own motion, the district court determined that plaintiff had failed to state a federal cause of action and dismissed the complaint for"lack of subject matter jurisdiction", entering judgment for the defendant on January 6, 1986. On reconsideration, the district court again found that the complaint failed to state a federal claim against either defendant and reaffirmed the dismissal.
This appeal followed.

II.

On appeal, the only issue is whether the district court erred in dismissing the complaint for failure to state a claim.[1]

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[1] Plaintiff purports to raise five issues on appeal, namely: 1) whether a federal court has jurisdiction over a case in which the plaintiff alleges that he was deprived

Although the district court stated that it dismissed plaintiff's complaint for lack of subject matter jurisdiction, it did so only because it found that the complaint failed to state a federal cause of action. It is, therefore,on that basis that we will review it decision.

A district court's sua sponte dismissal for failure to state a claim is proper, "so long as a sufficient basis for the court's action is apparent from the plaintiff's pleading ."Doe ex rel. Doe v. St. Joseph's Hospital of Fort Wayne, 788 F.2d 411, 414 (7th Cir. 1986). Accord Tamari v. Bache & Co.(Lebanon) S.A.L., 565 F.2d 1194, 1198 (7th Cir.

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1 (continued from page)
of his rights because he is Jewish and an immigrant; 2) whether arbitrary denial of a continuance in a criminal case in which plaintiff is a complaining witness constitutes a denial of due process; 3) whether the fact that a defendat has a history of ignoring state court orders creates a federal cause of action; 4) whether the existence of a conspiracy, once one is alleged by
(footnote continued on page)

1977), cert. denied 435 U.S. 905 (1978).

In determining whether a basis for dismissal exists, the court "must construe pleadings liberally." Strauss v. City of Chicago, 760 F.2d 765, 767 (7th Cir. 1985). Dismissal for failure to state a claim is proper only if "ist appears beyong doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. (quoting Conley v. Gibson, 355 U.S. 4, 45-46 (1957)).

III.

The distirct court found that plaintiff's complaint alleges no facts that conceivably entitle him to federal relief. We agree, although on different grounds.

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1 (continued from page)
plaintiff,is a "factual issue"which a jury must be allowed to decide; and 5) whether dismissal of plaintiff's claim on the pleadings violates his rights to due process and equal protection by denying him his "day in court". Our discussion below, in concluding that the district court properly dismissed plaintiff's complaint, disposes of all these claims.

First, plaintiff claims that the defendants' actions violated 42 U. S. C. §§1981 and 1985. Defendants Cohn and Daniels, however, are immune from suit under those sections. The provisions of the Civil Rights Acts are to be "read in harmony" with common law principles of tort immunity. Imbler v. Pachtman, 424 U.S. 409,418 (1976). Under the common law, "all persons- governmental or otherwise who are integral parts of the judicial process "enjoyed " absolute immunity from subsequent damages liability" for actions taken in the course of judicial proceedings. Briscoe v. Lahue, 460 U.S. 325 (1983).Thus,immunity under the Civil Rights statutes extends to judges, Pierson v. Ray, 386 U.S. 547 (1967), prosecutors, Imbler v. Pachtman, 424 U.S. 409, and witnesses, Briscoe v. LaHue,460 U.S.325. Although defense attorneys, at common law, did not enjoy a blanket immunity for intentional misconduct, Tower v. Glover, 104 S.Ct. 2820,2826 (1983),

they did benefit from immunity for defamatory statements made in the course of a trial

See, Imbler v. Pachtman, 424 U.S. at 426 n.23; Johnson v. Stone, 268 F.2d 803 (7th Cir. 1959).

Plaintiff's complaint alleges only that the defendants made certain statements in the course of a criminal trial at which they were acting as counsel for the defendant and for a witness. Thus, the complaint itself establishes the defendants' immunity and plaintiff's §1981 and §1985 claims [2] were properly dismissed.

Plaintiff's allegation that defendants Cohn and Daniels violated state laws, including several sections of the Illinois Code of Professional Responsibility, is also unavailing. Plaintiff alleges that the defendants' violations of state law led to the

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[2] While the plaintiff did not explicitly make a claim under 42 U.S.C. §1983, we note that the defendants would also be immune from such a claim.

dismissal of the criminal charges against Hansen. But plaintiff has no federal right to see that Hansen is successfully prosecuted. See Leeke v. Timmerman, 454 U.S. 83, 85-87 (1981); S. v. D., 410 U.S. 614, 619 (1973). Thus, plaintiff's allegations, even if true, could not support a federal action for damages.

Finally, plaintiff's complaint alleges that the actions of Cohn and Daniels at Hansen's trial amounted to "deliberate assault and battery" and subjected minorities and immigrants to the "legal terror of conspiring attorneys." We can only interpret these charges as a more colorful restatement of plaintiff's §1981, §1985 and state law claims. Our determination, above, that plaintiff's complaint fails to make out a federal claim therefore disposes of these allegations as well.

Because plaintiff's complaint fails to make any factual allegations that could sup-

port a claim against the defendants in federal court, dismissal by the district court on its own motion was proper.

AFFIRMED

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

February 17, 1987

Before
Hon. RICHARD A. POSNER, Circuit Judge
Hon. FRANK H. EASTERBROOK, Circuit Judge
Hon. WILBUR F. PELL, JR., Senior Circuit Judge

	:	Appeal from the
	:	United States
JACOB SAMPSON,	:	District Court
Plaintiff-Appellant,	:	for the Northern
	:	District of Illi-
No. 86-1840 v.	:	nois, Eastern Di-
	:	sion.
FREDERICK F. COHN &	:	No. 86 C 014
DAVID C. DANIELS,	:	Susan Getzendan-
Defendants-Appellees.	:	danner, Judge.

On consideration of the petition for rehearing filed in the above-entitled cause by plaintiff-appellant, Jacob Sampson, all of the judges on the original panel having voted to deny the same,

IT IS HEREBY ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

IN THE CIRCUIT COURT OF THE COOK COUNTY
JUDICIAL CIRCUIT, COOK COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	Branch 29
v.	)	No. 84-1-710431
COLEN HANSEN, Defendant.	)	CHARGE: BATTERY.

BENCH TRIAL

REPORT OF PROCEEDINGS of the trial before the Honorable GENE WILENS, on Wednesday, the 30th day of January, 1985.

APPEARANCES:

HON. RICHARD M. DALEY,
State's Attorney of Cook County,

MR. THOMAS HENNELLY,
Assistant State's Attorney,
on behalf of the Plaintiff;

MR. KEITH LIGON,
on behalf of the Defendant.

M.T. MAZUREK, CSR
Official Court Reporter
32 West Randolph-21st Fl.
Chicago, Illinois 60602
346-0572

EXTRACT OF COURT PROCEEDINGS
BEFORE HONORABLE GENE WILENS:

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THE COURT: Okay. There's no B of I here. I'll take your word as an officer of the Court that he has had no prior conflict with the law. Because if that were the case, I would certainly consider incarceration here.

Is he employed at the present time ?

MR. LIGON: Yes, your Honor.

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THE COURT: Doing what?

THE DEFENDANT: Accounting clerk.

THE COURT: Plea of not guilty, finding of guilty, jury waived. There will be a fine here of three hundred dollars.

(Emphais added)